IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 18TH OCTOBER 2007 / 26TH ASWINA 1929

Bail Appl..No. 5798 of 2007()

PETITIONER

DR. S.BALACHANDRAN, S/O. LATE
K.P.SIVARAMAN NAIR, AGED 57, NANDANAM,
PULLAD P.O., THIRUVALLA.

BY ADV. SRI.S.SREEKUMAR

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 18/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 5798 OF 2007

Dated this the 18th day of October, 2007

ORDER

Application for anticipatory bail. The petitioner – a medical practitioner, faces allegation under Sec.304 of the IPC. A young woman – aged 37 years, who was admitted in a private hospital for sterilization surgery, did not recover after administration of anesthesia and breathed her last though she was later shifted to breathing centres for treatment. On the complaint of the relatives, an F.I.R. was registered initially under the caption "unnatural death" under Sec.174 of the Cr.P.C. Later, investigation allegedly revealed the complicity of the petitioner. The opinion of the Board has already been taken. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that

even if the entire allegations were accepted, it is impossible to assume that the petitioner can even be alleged to be guilty of any offence other than the offence punishable under Sec.304A of the IPC. The allegation under Sec.304 of the IPC raised against the petitioner now is not justified at all. Even assuming that the allegations under Sec.304 of the IPC is justified, there is absolutely no reason to insist on the arrest and incarceration of the petitioner. He may, at any rate, be granted anticipatory bail, it is submitted.

3. The learned Public Prosecutor stoutly opposes the application. The learned Public Prosecutor mainly relies on two circumstances. The learned Public Prosecutor submits that the petitioner is not a qualified Anesthetist and he is therefore not entitled to administer anesthesia at all. It is further contended that though it is the case of the petitioner and the hospital that general anesthesia was administered, there were indications in the post post-mortem certificate to show that actually spinal anesthesia had been administered. There was an attempt to suppress the truth and mislead others, it is evident from the totality of the circumstances, urges the learned Public Prosecutor.

4. I have considered all the relevant inputs. The Case

Diary has been perused by me. Having considered all the relevant circumstances, I find merit in the prayer of the learned counsel for the petitioner for anticipatory bail. I am, in the facts and circumstances of this case, satisfied that subject to appropriate conditions which shall ensure the interests of a fair, efficient and expeditious investigation, anticipatory bail can be granted to the petitioner.

5. In the result, this petition is allowed. Following directions are issued under Sec.438 of the Cr.P.C:

(i) The petitioner shall appear before the learned Magistrate having jurisdiction at 11 a.m. on 25/10/07. He shall be released on regular bail on his executing a bond for Rs.50,000/- with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(ii) The petitioner shall make himself available for interrogation before the Investigating Officer between 10 a.m. and 3 p.m. on 26/10/07 and 27/10/07 and thereafter as and when directed by the Investigating Officer in writing to do so.

(iii) If the petitioner does not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to

arrest the petitioner and deal with him in accordance with law as if these directions were not issued at all;

(iv) If the petitioner were arrested prior to his surrender on 25/10/07 as directed in clause (i) above, he shall be released on his executing a bond for Rs.25,000/- without any sureties undertaking to appear before the learned Magistrate on 25/10/07.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge